APPENDIX A

No. 92-1123

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

IZUMI SEIMITSU KOGYO KABUSHIKI KAISHA,
Petitioner,

v.

U.S. PHILIPS CORPORATION, NORTH AMERICAN PHILIPS CORPORATION, N.V. PHILIPS GLOEILAMPENFABRIEKEN,
and
WINDMERE CORPORATION,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITIONER'S BRIEF ON THE MERITS

. . . .

Having held that Izumi did not have standing to oppose the Philips/Windmere motion to vacate either as a party to the original district court action, as an affected third party, or as an intervenor (Pet. A2-A5), the Federal Circuit nevertheless addressed the merits of Izumi's opposition.

However, even though vacatur created the prospect of duplicating in Illinois the lengthy and complex trial conducted in Florida, the Federal Circuit granted the motion to vacate (Pet. A5-A6).

. . . .

Respectfully submitted,

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April 22, 1993

APPENDIX B

No. 92-1123

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

IZUMI SEIMITSU KOGYO KABUSHIKI KAISHA,
Petitioner,

v.

U.S. PHILIPS CORPORATION, NORTH AMERICAN PHILIPS CORPORATION, N.V. PHILIPS GLOEILAMPENFABRIEKEN,
and
WINDMERE CORPORATION,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

BRIEF OF AMICUS CURIAE SEARS, ROEBUCK & CO. ON THE MERITS IN SUPPORT OF PETITIONER

. . . .

When courts allow dissatisfied litigants to vacate judgments simply by settling cases after appealing an adverse

ruling, litigants can effectively undermine the reliability of the developed law. Instead of undertaking the burden and risk of seeking to reverse or modify adverse decisions on appeal, litigants such as Philips can pay to have such precedents removed from the books so that they and others similarly situated can relitigate the issues decided against them. Neither the public interest nor the interest of justice is served when the development of the law is disturbed in this manner.

. . . .

Respectfully submitted,

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April 22, 1993

APPENDIX C

I. Federal Cases

See, e.g., *Davis* v. *City of San Francisco*, 984 F.2d 345 (9th Cir. 1993); *Rodriguez* v. *MEBA Pension Trust*, 978 F.2d 1334 (4th Cir. 1992); *Purcella* v. *United States*, 968 F.2d 10 (10th Cir. 1992); *Studio 1712, Inc.* v. *Etna Prods. Co.*, 968 F.2d 10 (10th Cir. 1992); *Baxter Healthcare Corp.* v. *Healthdyne, Inc.*, 956 F.2d 226, 227 (11th Cir. 1992); *Israel Discount Bank Ltd.* v. *Entin*, 951 F.2d 311, 313 n.3 (11th Cir. 1992); *Laber* v. *Merit Sys. Protection Bd.*, 982 F.2d 519, 520 (Fed. Cir. 1992); *Oracare DPO, Inc.* v. *Merin*, 972 F.2d 519, 523 (3d Cir. 1992); *Resolution Trust Corp.* v. *Tetco, Inc.*, No. 91-5612, 1992 WL 437650, at *1 (5th Cir. Apr. 22, 1992); *Trudo* v. *County of Pueblo*, No. 91-1253, 1992 U.S. App. LEXIS 19164, at *1 (10th Cir. Aug. 11, 1992); *Kimbrough* v. *Bowman Transp., Inc.*, 929 F.2d 599 (11th Cir. 1991); *Kliebert* v. *Upjohn Co.*, 947 F.2d 736, 737 (5th Cir. 1991); *Howell* v. *Evans*, 931 F.2d 711, 712 (11th Cir. 1991); *In re Shelby Motel Group, Inc.*, 925 F.2d 1583, 1584 (11th Cir. 1991); *Mur-Maid Enters., Inc.* v. *Townsend*, 951 F.2d 297 (11th Cir. 1991); *Wiley* v. *Western Airlines*, 930 F.2d 921 (9th Cir. 1991) (text in Westlaw); *Showtime/The Movie Channel, Inc.* v. *Covered Bridge Condominium Ass'n*, 895 F.2d 711, 713-14 (11th Cir. 1990); *Reliance Ins. Co.* v. *Kent Corp.*, 909 F.2d 424, 425 (11th Cir. 1990); *Long Island Lighting Co.* v. *Cuomo*, 888 F.2d 230, 233-34 (2d Cir. 1989); *Dunn* v. *Blue Ridge Tel. Co.*, 888 F.2d 731, 732 (11th Cir. 1989); *United States* v. *Queen Mountain Mining, Inc.*, 865 F.2d 1269 (6th Cir. 1989) (text in Westlaw); *Smith Int'l, Inc.* v. *Hughes Tool Co.*, 839 F.2d 663, 664 (Fed. Cir. 1988); *Federal Data Corp.* v. *SMS Data Prods. Group, Inc.*, 819 F.2d 277, 280 (Fed. Cir. 1987); *Tosco Corp.* v. *Hodel*, 826 F.2d 948, 948 (10th Cir. 1987); *Société Nationale Industrielle Aerospatiale* v. *United States*

Dist. Ct. for the Dist. of Alaska, 823 F.2d 382, 383 (9th Cir. 1987); *Grochal* v. *Aeration Processes, Inc.*, 812 F.2d 745 (D.C. Cir. 1987); *Kennedy* v. *Block*, 784 F.2d 1220, 1225 (4th Cir. 1986); *Nestle Co.* v. *Chester's Mkt., Inc.*, 756 F.2d 280, 284 (2d Cir. 1985); *Hendrickson* v. *Secretary of Health & Human Servs.*, 774 F.2d 1355 (8th Cir. 1985); *Douglas* v. *Donovan*, 704 F.2d 1276, 1280 (D.C. Cir. 1983); *Delta Air Lines* v. *McCoy Restaurants, Inc.*, 708 F.2d 582, 584 (11th Cir. 1983); *Aviation Enters., Inc.* v. *Orr*, 716 F.2d 1403, 1408 (D.C. Cir. 1983); *Amalgamated Clothing & Textile Workers Union, AFL-CIO* v. *J.P. Stevens & Co.*, 638 F.2d 7, 8 (2d Cir. 1980); *Inland Corp.* v. *Buckeye Tank Terminals, Inc.*, No. 78-3062/3, slip op. at 1 (6th Cir. May 15, 1980); *Ellis* v. *Flying Tiger Corp.*, 504 F.2d 1004, 1006 (7th Cir. 1972); *United States* v. *Hartec Enters., Inc.*, 130 B.R. 929 (W.D. Tex. 1991); *Tyson* v. *Levinson*, 927 F.2d 1258 (D.C. Cir. 1991) (text in Westlaw); *Trailer Marine Transp. Corp.* v. *Philadelphia Export Consolidations, Inc.*, No. 88-4634, 1991 U.S. Dist. LEXIS 5318, at *1 (D.N.J. Mar. 27, 1991); *Bonnett* v. *United States*, No. 91-352-CIV-T-10A, 1991 U.S. Dist. LEXIS 16637, at *1 (M.D. Fla. Oct. 29, 1991); *DeLorean* v. *Cork Gully*, 118 B.R. 932, 938 (E.D. Mich. 1990); *In re Fryar*, 113 B.R. 317, 318 (W.D. Tex. 1989); *Schering Corp.* v. *Schering Aktiengesellschaft*, 709 F. Supp. 529, 530 (D.N.J. 1988); *Streiff Jewelry Co.* v. *United Parcel Serv.*, 679 F. Supp. 7 (S.D. Fla. 1988); *Jacobson* v. *John Hancock Mut. Life Ins. Co.*, 662 F. Supp. 1103, 1113 (D. Conn. 1987); *Lowery* v. *WMC-TV*, 661 F. Supp. 65, 65-66 (W.D. Tenn. 1987); *Welsch* v. *Gardebring*, 667 F. Supp. 1284, 1298 (D. Minn. 1987); *Hi-Hat Restaurant, Inc.* v. *INS*, 584 F. Supp. 1272 (D. Or. 1984); *Candelaria Indus., Inc.* v. *Occidental Petroleum Corp.*, 662 F. Supp. 1002, 1011 (D. Nev. 1984); *Universal City Studios, Inc.* v. *Nintendo Co.*, 578 F. Supp. 911, 916 (S.D.N.Y. 1983), *aff'd*, 746 F.2d 112 (2d Cir. 1984);

Harrell v. *C.C. Mayes Co.*, 99 Lab. Cas. (CCH) ¶ 10,725, at 20,504-05 (E.D. Tenn. 1983); *D'Antonio* v. *United States*, 635 F. Supp. 391, 392 (S.D. Ohio 1983); *Angstrohm Precision, Inc.* v. *Vishay Intertechnology, Inc.*, 567 F. Supp. 537, 539 (E.D.N.Y. 1982); *United States* v. *AT&T*, 552 F. Supp. 131, 138 n.17, 226 (D.D.C. 1982), *aff'd sub nom.*, *Maryland* v. *United States*, 460 U.S. 1001 (1983); *Township of River Vale* v. *Harris*, 444 F. Supp. 90, 91 (D.D.C. 1978); *Breckenridge Hotels Corp.* v. *Real Estate Research Corp.*, 456 F. Supp. 385 (E.D. Mo. 1978); *Doe* v. *Swinson*, No. 76-91-A, slip op. at 1 (E.D. Va. Dec. 22, 1976); *St. Paul Fire & Marine Ins. Co.* v. *Hundley*, 354 F. Supp. 655, 657-58 (E.D. Ark. 1973).

II. State Cases

See, e.g., *City of Valdez* v. *Gavora, Inc.*, 692 P.2d 959, 960-61 (Alaska 1984); *Southwest Sav. Loan Ass'n* v. *Mason*, 751 P.2d 526, 527 (Ariz. 1988); *Sanson* v. *Gonzales*, 688 P.2d 641, 642 (Ariz. 1984); *Food for Health Co.* v. *3839 Joint Venture*, 628 P.2d 986, 989 (Ariz. Ct. App. 1981); *Neary* v. *Regents of the Univ. of Cal.*, 834 P.2d 119, 126 (Cal. 1992); *Fowler* v. *Associated Oil Co.*, 79 P.2d 728 (Cal. 1938); *Stonewall Ins. Co.* v. *City of Palos Verdes Estates*, 9 Cal. Rptr. 2d 663, 666, 681 (Cal. Ct. App. 1992); *City of Laguna Beach* v. *Mead Reins. Corp.*, 276 Cal. Rptr. 438, 441 (Cal. Ct. App. 1990); *Cabot* v. *Colorado Charter Lines, Inc.*, 776 P.2d 1151, 1151 (Colo. Ct. App. 1989); *Sobocinski* v. *Freedom of Info. Comm'n*, 566 A.2d 703, 708-09 (Conn. 1989); *Lee* v. *A.C. & S., Inc.*, 538 A.2d 1113 (Del. 1988) (text in Westlaw); *In re Miller's Estate*, 197 So. 791 (Fla. 1940); *Burgwin* v. *Stewart*, 182 So. 297 (Fla. 1938); *State ex rel. Meredith* v. *Cone*, 177 So. 545 (Fla. 1937); *Adams* v. *Galloway*, 155 So. 96 (Fla. 1934); *Robinson* v. *Croker*, 158 So. 123, 124 (Fla. 1934); *Mortgage Corp. of Am.* v. *Inland Constr. Co.*, 463 So. 2d 1196, 1196 (Fla. Dist. Ct. App.

1985); *Rothenberg* v. *Connecticut Mut. Life Ins. Co.*, 161 So. 2d 875, 877 (Fla. Dist. Ct. App. 1964); *Schlitz* v. *Schlitz*, 138 So. 2d 806, 806-07 (Fla. Dist. Ct. App. 1962); *L.P. Gunson & Co.* v. *Merritt*, 100 So. 2d 191, 192 (Fla. Dist. Ct. App. 1958); *McKenzie* v. *Chastain*, 184 S.E. 276, 277 (Ga. 1936); *Hales* v. *Worthy*, 43 Ga. 178 (1871); *Dougherty County Sch. Sys.* v. *Grossman*, 149 S.E.2d 920 (Ga. Ct. App. 1966); *Barnett* v. *Moss*, 106 S.E.2d 60 (Ga. Ct. App. 1958); *Padgett* v. *Padgett*, 13 S.E.2d 40 (Ga. Ct. App. 1941); *E. Frederics, Inc.* v. *Felton Beauty Supply Co.*, 9 S.E.2d 198 (Ga. Ct. App. 1940); *Henry* v. *St. John's Hosp.*, 563 N.E.2d 410, 412 (Ill. 1990), *cert. denied*, 499 U.S. 976 (1991); *Jessee* v. *Amoco Oil Co.*, 594 N.E.2d 1210, 1211 (Ill. App. Ct. 1992); *Burris* v. *John Blue Co.*, 358 N.E.2d 724, 725-26 (Ill. App. Ct. 1976); *Nahigian Bros., Inc.* v. *Rug Serv., Inc.*, 12 N.E.2d 42 (Ill. App. Ct. 1937); *GTE North Inc.* v. *First State Ins. Co.*, No. 88 C 4376, 1990 U.S. Dist. LEXIS 15413, at *6-*7 (N.D. Ill. Oct. 25, 1990); *Thompson* v. *Stephenson*, 332 N.W.2d 341, 342 (Iowa 1983); *In re Estate of Williams*, 216 N.W.2d 568, 569-70, 573 (Iowa 1974); *Board of Educ.* v. *Muncy*, 239 S.W.2d 471, 473-74 (Ky. 1951); *St. Charles Parish Sch. Bd.* v. *GAF Corp.*, 512 So. 2d 1165, 1173 (La. 1987); *Preston Oil Co.* v. *Transcontinental Gas Pipe Line Corp.*, 594 So. 2d 908, 909-10 (La. Ct. App. 1991); *Bolin* v. *Hartford Accident & Indem. Co.*, 198 So. 2d 489 (La. Ct. App. 1967); *Callihan* v. *Monsour*, 34 So. 2d 521 (La. Ct. App. 1948); *Rogge* v. *Cafiero*, 134 So. 909, 910 (La. Ct. App. 1931); *Area Dev. Corp.* v. *Free State Plaza, Inc.*, 254 A.2d 355, 356-57 (Md. 1969); *Ladner* v. *Ladner*, 97 So. 2d 238, 239 (Miss. 1957); *Ogle* v. *Guardsman Ins. Co.*, 701 S.W.2d 469, 470-71 (Mo. Ct. App. 1985); *Koone* v. *Montgomery*, 114 S.W.2d 713 (Mo. Ct. App. 1938); *Civil Serv. Bar Ass'n* v. *City of New York*, 474 N.E.2d 587, 589 (N.Y. 1984); *Ruben* v. *American & Foreign Ins. Co.*, 592 N.Y.S.2d 167, 171 (N.Y. App.

Div. 1992); *Two Lincoln Square Assocs.* v. *New York City Conciliation & Appeals Bd.*, 427 N.Y.S.2d 424, 424 (N.Y. App. Div. 1980); *Stokes-Grimes Grocery Co.* v. *Hill*, 97 S.E. 468 (N.C. 1918); *In re Garner's Estate*, 148 P.2d 784 (Okla. 1944); *Ray* v. *Phillips Petroleum Co.*, 148 P.2d 784 (Okla. 1944); *Bigpond* v. *Mutaloke*, 105 P.2d 408, 410 (Okla. 1940); *Martin* v. *Mutaloke*, 105 P.2d 413, 415 (Okla. 1940); *Smith* v. *Plains Petroleum Corp.*, 25 P.2d 323, 325-26 (Okla. 1933); *Banister Continental Corp.* v. *Northwest Pipeline Corp.*, 724 P.2d 822 (Or. 1986); *Morgan* v. *Stimson Lumber Co.*, 618 P.2d 970, 973 (Or. Ct. App. 1980); *General Motors Acceptance Corp.* v. *Carter*, 361 S.E.2d 620 (S.C. 1987); *Commonwealth Lloyd's Ins. Co.* v. *Thomas*, 843 S.W.2d 486, 487 (Tex. 1993); *Public Citizen* v. *Third Court of Appeals*, 846 S.W.2d 284, 285 (Tex. 1993) (Doggett, J., concurring); *Harbison-Fisher Mfg. Co.* v. *Mohawk Data Sciences Corp.*, 840 S.W.2d 383, 383-84 (Tex. 1992); *Kidder, Peabody & Co.* v. *Lutheran Bhd.*, 840 S.W.2d 384 (Tex. 1992); *Raborn* v. *Davis*, 795 S.W.2d 716, 717 (Tex. 1990); *United Servs. Auto. Ass'n* v. *Lederle*, 400 S.W.2d 749 (Tex. 1966); *Swanson Broadcasting, Inc.* v. *Clear Channel Communications, Inc.*, 762 S.W.2d 360, 361 (Tex. Ct. App. 1988); *Butler* v. *State*, 481 S.W.2d 907 (Tex. Crim. App. 1972); *Salazar* v. *State*, 486 S.W.2d 323, 324 (Tex. Crim. App. 1972); *Duke* v. *Sears, Roebuck & Co.*, 446 S.W.2d 886, 887 (Tex. Civ. App. 1969); *Castro* v. *Highlands Ins. Co.*, 401 S.W.2d 689 (Tex. Civ. App. 1966); *Eichelberger* v. *Orr*, 392 S.W.2d 474, 474-75 (Tex. Civ. App. 1965); *St. Louis, B. & M. Ry.* v. *Texas Mexican Ry.*, 212 S.W.2d 502, 503 (Tex. Civ. App. 1948); *Polunsky* v. *Polunsky*, 152 S.W.2d 932, 933 (Tex. Civ. App. 1941); *Dilbeck* v. *Estep*, 145 S.W.2d 218, 219 (Tex Civ. App. 1940); *Superior Oil Co.* v. *Blain*, 141 S.W.2d 428, 429 (Tex. Civ. App. 1940); *United Employers Casualty Co.* v. *Teer*, 142 S.W.2d 933, 934 (Tex. Civ. App. 1940); *Maryland Casualty Co.* v.

Brakebill, 130 S.W.2d 306 (Tex. Civ. App. 1939); *Southern Underwriters* v. *Evans*, 112 S.W.2d 542 (Tex. Civ. App. 1938); *Cullen* v. *Ellis County Levee Improvement Dist.*, 77 S.W.2d 310, 311-12 (Tex. Civ. App. 1934); *San Jacinto Rice Co.* v. *Hamman*, 247 S.W. 500, 500-01 (Tex. Com. App. 1923).